INFORMATION BULLETIN

February 7, 2014 **2014-3**

HARMONIZATION WITH CERTAIN FEDERAL FISCAL MEASURES

This information bulletin presents the position of the Ministère des Finances et de l'Économie concerning certain fiscal measures in the *Economic Action Plan 2013 Act, No. 2*[1] and the proposed amendments that the federal government announced on January 17, 2014 to prevent input tax credit claims that exceed tax actually paid.[2]

To obtain information on topics discussed in this information bulletin, please contact the secteur du droit fiscal et des politiques locales et autochtones at 418 691-2236.

The French and English versions of this bulletin are available on the Ministère des Finances et de l'Économie website at: www.mfeq.gouv.qc.ca.

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1 S.C. 2013, c. 40.

2 DEPARTMENT OF FINANCE CANADA, *News Release 2014-006: The Department of Finance Clarifies GST/HST Rules Following Court Decision*, www.fin.gc.ca/n14/14-006-eng.asp.

1. HARMONIZATION WITH CERTAIN MEASURES IN THE *ECONOMIC ACTION PLAN 2013 ACT, NO. 2*

On December 12, 2013, the *Economic Action Plan 2013 Act, No. 2*[3] was assented to. From a fiscal standpoint, the Act is intended essentially to implement certain measures announced in the March 21, 2013 federal budget and most of the measures that the Department of Finance Canada proposed in *News Release 2012-082* of July 25, 2012[4] and *News Release 2012-175* of December 21, 2012.[5] It also contains other technical adjustments to federal tax legislation and regulations, as well as consequential and terminology-related adjustments.

The Ministère des Finances et de l'Économie has already indicated in *Information Bulletin 2012-6* of December 21, 2012 Québec's position concerning the fiscal measures in the Act that seek to implement the legislative proposals that accompany *News Release 2012-082* of July 25, 2012. *Information Bulletin 2013-7* of July 11, 2013 reported the decisions to harmonize or not harmonize the Québec taxation system with the measures in the March 21, 2013 federal budget.

To the list of measures already retained for the purposes of integration into Québec tax legislation and regulations are added certain legislative or regulatory amendments in the *Economic Action Plan 2013 Act, No. 2* stemming from *News Release 2012-175* of December 21, 2012, or that are of a purely technical nature or consequential or terminology. Unless otherwise specified, the changes to the Québec taxation system will be applicable on the same dates as those retained for the purposes of the federal measures with which they are harmonized.

More specifically, Québec's tax legislation and regulations will be amended to incorporate, with adaptations on the basis of their general principles, the measures relating to:

— the elimination of a reference to the transitional relief rules concerning the income that the owner derives from a business (3);[6]

— the determination of the nature of certain property (6(2));

— the corrections to the English versions of paragraph 20(8), subparagraph 28(1)*a*)(ii), paragraph 40(2) and paragraph 157(1.5) the *Income Tax Act*[7] (11(5), 13, 19(1), 69(1) and 69(2));

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3 See note 1.

4 DEPARTMENT OF FINANCE CANADA, *News Release 2012-082: Harper Government Releases Draft Legislation to Strengthen Tax Fairness for Canadians*, www.fin.gc.ca/n12/12-082-eng.asp.

5 DEPARTMENT OF FINANCE CANADA, *News Release 2012-175: Harper Government Releases Income Tax Technical Amendments for Public Comment*, www.fin.gc.ca/n12/12-175-eng.asp.

6 The references in parentheses correspond to the number of the provisions of the *Economic Action Plan 2013 Act, No. 2*.

7 R.S.C., 1985, c. 1, 5th suppl.

- the abrogation of the deemed December 31, 1995 income (15);
- the income of corporate partners (16);
- the abrogation of provisions respecting railway companies (17 and 102(3));
- flow-through entities (22(4));
- changes concerning provisions relating to capital gains stripping (24);
- the replacement of the expression "urban area" by the expression "population centre" for the purposes of the exemption for meal and entertainment expenses (33);
- amendments concerning the winding-up of a subsidiary (40);
- changes regarding non-resident trusts (42);
- members of a partnership who are deemed to carry on a business in Canada (43);
- the modification of the formula that appears in the definition of "farm loss" (47(3));
- modifications to the formula that appears in the definition of "specified partnership income" in paragraph 125(7) of the *Income Tax Act* (55);
- the calculation of adjusted taxable income for the application of the alternative minimum tax, given that an individual may, for the application of the Québec taxation system, make a choice that is different from the one he makes for the application of the federal taxation system and that the choice must be made before the 90th day after the date of the assenting to of the bill incorporating this measure into Québec's tax legislation (60);
- payments in respect of shares by credit unions (62);
- property evaluated at market value for the purposes of a significant interest in a corporation (63);
- the adjustment of considerations paid, payable or accruing to a corporation resident in Canada for the provision of a guarantee for the total or partial repayment of an amount due by a non-resident person (88);
- the replacement of the expression "urban area" by the expression "population centre" for the application of the definition of the term "automobile" (89(3));
- changes to the rules respecting rental properties and specified energy property for partnerships (100(11) to 100(14));
- the modification of the definition of "gross cost" of section 5204 of the *Income Tax Regulations*[8] (110);

8 C.R.C., c. 945.

— the adding of prescribed distributions for the application of the rule governing foreign spin-offs stipulated in section 86.1 of the *Income Tax Act* (111);

— Canadian renewable and conservation expense (114).

Moreover, certain measures have not been retained because they do not correspond to the characteristics of the Québec taxation system or because the latter is satisfactory or does not contain similar provisions. The measures concern:

— the corrections to the English versions of subparagraph 44(7)*c*) of the *Income Tax Act* (20);

— the abrogation of a reference concerning bad debts in subsection 50(1)b)(i) of the *Income Tax Act* (21);

— the spreading of the taxation of certain government benefits (25(2) and 25(3));

— the deduction of an amount reimbursed by a taxpayer on account of a scholarship, fellowship, bursary, research grant or prize for achievement (26);

— the deduction of support payment (27 to 29);

— mandatory ancillary fees and charges eligible for the tuition tax credit (50);

— the Canada child tax benefit (52 and 53);

— the definition of "non-government assistance" that appears in paragraph 127(9) of the *Income Tax Act* (57(1));

— the definition of "qualifying corporation" for the investment tax credit (58);

— cooperative corporation that is not deemed to be a private corporation (61);

— the anti-avoidance rules applicable to tax-free savings accounts, registered retirement income funds and registered retirement savings plans (74 to 79 and 107 to 109);

— the branch tax of Part XIV of the *Income Tax Act* (84);

— the disclosure of information (85, 87, 104, 105 and 112);

— the modification of a reference in the definition of a prescribed obligation for the purposes of the non-residents tax (99);

— the international organizations covered for the application of the foreign tax credit (115).

2. HARMONISATION WITH NEWS RELEASE 2014-006 OF JANUARY 17, 2014

On January 17, 2014, the Department of Finance Canada made public through a news release proposed amendments to the *Excise Tax Act*[9] to clarify in the wake of a judicial decision the application of certain rules respecting the goods and services tax and the harmonized sales tax (GST/HST) to prevent input tax credits (ITCs) claims that exceed tax actually paid.[10]

Given that the Québec sales tax (QST) system is harmonized with the GST/HST system regarding the legislative provisions covered by the proposed amendments to prevent ITCs claims in respect of an amount of tax already recovered from a supplier, it is necessary to make the same clarifications in the Québec's tax system, which will be amended accordingly.

However, the proposed amendments in the federal news release concerning importers will not be retained in the QST system since the latter does not include legislative provisions corresponding to those covered by these amendments.

The amendments retained in the QST system will be adopted only after the assent of any legislation arising from the federal news release, taking into account technical amendments that may be made prior to such assent. They will apply on the same dates as those for the purposes of the federal amendments to which they are harmonized.

9 R.S.C., 1985, c. E-15.

10 See note 2.